

SENATE BILL REPORT

SB 5928

As of February 17, 2009

Title: An act relating to the modernization and clarification of the powers of the public deposit protection commission in regard to banks, savings banks, and savings associations as public depositaries.

Brief Description: Concerning the powers of the public deposit protection commission in regard to banks, savings banks, and savings associations as public depositaries.

Sponsors: Senator Brown; by request of State Treasurer.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/18/09.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Diane Smith (786-7410)

Background: Public funds may only be deposited in banks and thrift institutions that have been approved as public depositaries by the Public Deposit Protection Commission (Commission). The Commission was established in 1969 and is comprised of the Governor, the Lieutenant Governor, and the State Treasurer. The State Treasurer chairs the Commission and provides administrative support. The Commission is responsible for protecting all public funds deposited in public depositaries.

"Public funds" are those monies belonging to or held for the state, its political subdivisions, municipal corporations, agencies, courts, boards, commissions, or committees, and includes monies held in trust.

A "public depository" is defined as a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the Commission to hold public deposits, and which has segregated for the benefit of the Commission eligible collateral having a value of not less than its maximum liability. There are separate collateral pools maintained for banks and thrifts.

The Commission's powers include:

- making and enforcing regulations to complete its functions;

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- requiring any public depository to furnish information dealing with public deposits and the exact status of its net worth;
- taking action for the protection, collection, compromise, or settlement of any claim arising in case of loss;
- fixing the requirements for qualification of financial institutions as public depositories, and fixing other terms and conditions under which public deposits may be received and held;
- setting criteria establishing minimum standards for the financial condition of bank and thrift depositories and, if the minimum standards are not met, providing for additional collateral requirements or restrictions regarding a public depository's right to receive or hold public deposits;
- fixing the official date on which any loss must be deemed to have occurred; and
- in case loss occurs in more than one public depository, determining the allocation and time of payment of any sums due to public depositors.

To be approved as a public depository, a financial institution must meet minimum requirements of the Commission and must pledge securities as collateral to protect public funds on deposit in all public depositories (not just for that particular institution). For the first 12 months as a public depository, a depository must pledge and segregate eligible securities of at least 10 percent of all public funds on deposit in the depository. If deposit insurance and collateral pledged by a failed institution are insufficient to reimburse all public depositors, the other public depositories are each assessed a proportionate share of the shortfall.

The Commission may require the State Auditor or the Department of Financial Institutions (DFI) to investigate and report on the condition of any financial institution applying to become a public depository. The Commission may also require an investigation and report on the condition of any public depository. The DFI must also advise the Commission of any action the agency has directed a public depository to take which will result in a reduction of greater than 10 percent of the net worth of the depository. A public depository must notify the Commission within five working days of any event that causes a reduction of greater than 10 percent in the net worth of the depository.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed First Substitute): The Commission is given "broad administrative discretion" in performing its general powers. The Commission may delegate all of its authority to the State Treasurer, except rulemaking. The enforcement authority of the Commission is clarified. The Commission may assess costs or deny, suspend, or revoke authority to hold public funds, if a public depository fails to provide or allow verification of required information; or comply with relevant laws and rules or policies of the Commission. The Commission may also make and enforce sanctions against a public depository for noncompliance with relevant laws, rules, or policies.

The Commission is authorized to set by resolution, based on criteria established in rule, a sum or measure as the maximum liability of public depositories. The State Treasurer may also do so in exigent circumstances, but the sum or measure must be reviewed and ratified by the Commission within 90 days.

In addition to the existing requirement that the DFI certify reports from public depositaries, the DFI must provide information or data as may be required by the Commission.

The Commission must maintain a single depositary pool and treat public depositaries uniformly without regard to differences in their charters.

The Commission may establish the required amount of eligible securities that a public depositary must pledge and segregate.

Public depositaries must provide the exact status of its capitalization, collateral, and liquidity, in addition to the existing requirement of providing information about its net worth. They must also report the uninsured amount of public funds on deposit. Public depositaries must notify the Commission of an event that causes its net worth to be reduced in an amount greater than 10 percent, from within five working days to within 48 hours, or by the close of business of the following business day.

A public depositary's maximum liability for loss per occurrence by another public depositary, on any given date, is a sum equal to 10 percent of either all uninsured public deposits held by a public depositary that has not incurred a loss by the most recent Commission report date; or the average of the balances of uninsured public deposits in the last four reports. If a public depositary is 100 percent collateralized by eligible collateral, the "maximum liability" of a public depositary that has not incurred a loss may not exceed the 10 percent sum.

A public depositary's liability is not altered by a merger, takeover, or acquisition, except if liability is assumed by agreement or law by the successor entity or resulting financial institution.

The State Treasurer must report to the Legislature on actions taken by the Commission and the State Treasurer regarding public deposit protection by December 1 of each year.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.